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APPENDIX A TO PART 386—PENALTY SCHEDULE; VIOLATIONS OF NOTICES AND ORDERS

AUTHORITY: Title XII of Public Law 99–570, 100 Stat. 3207–170 (49 U.S.C. App. 2701 *et seq.*); Title II of Public Law 98–554, 98 Stat. 2829 (49 U.S.C. App. 2501 *et seq.*); Public Law 97–449, 96 Stat. 2413 (49 U.S.C. 104(c)(2), 501 *et seq.*, 3101 *et seq.*); Public Law 93–633, 88 Stat. 2156 (49 U.S.C. App. 1801 *et seq.*); Public Law 97–261, 96 Stat. 1121 (49 U.S.C. 10927, note); Public Law 96–296, 94 Stat. 820 (49 U.S.C. 10927, note); 49 CFR 1.45, 1.48.

SOURCE: 50 FR 40306, Oct. 2, 1985, unless otherwise noted.

Subpart A—Scope of Rules; Definitions**§ 386.1 Scope of rules in this part.**

The rules in this part govern procedures in proceedings before the Associate Administrator authorized by the Commercial Motor Vehicle Safety Act of 1986, title XII of Public Law 99–570, 100 Stat. 3207–170 (49 U.S.C. 2701 *et seq.*); the Motor Carrier Safety Act of 1984, Public Law 98–554, 98 Stat. 2829 (49 U.S.C. 2501 *et seq.*); the recodification of title 49, United States Code, Transportation, Public Law 97–449, 96 Stat. 2413 (49 U.S.C. 104(c)(2), 501 *et seq.*, 3101 *et seq.*); the Hazardous Materials Transportation Act, Public Law 93–633, 88

Stat. 2156 (49 U.S.C. 1801 *et seq.*); the Bus Regulatory Reform Act of 1982, Public Law 97–261, 96 Stat. 1121 (49 U.S.C. 10927, note) and the Motor Carrier Act of 1980, Public Law 96–296, 94 Stat. 820, as amended by Public Law 97–424, 96 Stat. 2158 (49 U.S.C. 10927, note). The purpose of the proceedings is to enable the Associate Administrator to determine whether any motor carrier, its agent, employee or other person subject to the jurisdiction of the FHWA under any of the above-mentioned Acts has failed to comply with any provision or requirement of those statutes or regulations issued under them and, if such a violation is found, to issue an appropriate order to compel compliance with the statute or regulation, assess a civil penalty, or both.

[50 FR 40306, Oct. 2, 1985, as amended at 53 FR 2036, Jan. 26, 1988]

§ 386.2 Definitions.

Abate or abatement means to discontinue regulatory violations by refraining from or taking actions identified in a notice to correct noncompliance.

Administration means the Federal Highway Administration.

Administrative law judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105.

Associate Administrator means the Associate Administrator for Motor Carriers of the Federal Highway Administration or his/her authorized delegate.

Civil forfeiture proceedings means proceedings to collect civil penalties for violations under the Commercial Motor Vehicle Safety Act of 1986, title XII of Public Law 99–570, 100 Stat. 3207–170 (49 U.S.C. 2701 *et seq.*); the Hazardous Materials Transportation Act, 49 U.S.C. 1809; 49 U.S.C. 3102; the Motor Carrier Safety Act of 1984, 49 U.S.C. 2501 *et seq.*; section 30 of the Motor Carrier Act of 1980, 49 U.S.C. 10927, note; or section 18 of the Bus Regulatory Reform Act of 1982, 49 U.S.C. 10927, note.

Claimant means the representative of the Federal Highway Administration authorized to make claims.

Compliance Order means a written direction to a respondent under this part requiring the performance of certain acts which, based upon the findings in

the proceeding, are considered necessary to bring respondent into compliance with the regulations found to have been violated.

Consent Order means a compliance order which has been agreed to by respondent in the settlement of a civil forfeiture proceeding.

Driver qualification proceeding means a proceeding commenced under 49 CFR 391.47 or by issuance of a letter of disqualification.

Motor carrier means a motor carrier, motor contract carrier, motor private carrier, or motor carrier of migrant workers as defined in 49 U.S.C. 3101 and 10102.

Petitioner means a party petitioning to overturn a determination in a driver qualification proceeding.

Respondent means a party against whom relief is sought or claim is made.

[50 FR 40306, Oct. 2, 1985, as amended at 53 FR 2036, Jan. 26, 1988; 56 FR 10182, Mar. 11, 1991]

Subpart B—Commencement of Proceedings, Pleadings

§ 386.11 Commencement of proceedings.

(a) *Driver qualification proceedings.* These proceedings are commenced by the issuance of a determination by the Director, Office of Motor Carrier Standards, in a case arising under § 391.47 of this chapter or by the issuance of a letter of disqualification.

(1) Such determination and letters must be accompanied by the following:

(i) A citation of the regulation under which the action is being taken;

(ii) A copy of all documentary evidence relied on or considered in taking such action, or in the case of voluminous evidence a summary of such evidence;

(iii) Notice to the driver and motor carrier involved in the case that they may petition for review of the action;

(iv) Notice that a hearing will be granted if the Associate Administrator determines there are material factual issues in dispute;

(v) Notice that failure to petition for review will constitute a waiver of the right to contest the action; and

(vi) Notice that the burden of proof will be on the petitioner in cases arising under § 391.47 of this chapter.

(2) At any time before the close of hearing, upon application of a party, the letter or determination may be amended at the discretion of the administrative law judge upon such terms as he/she approves.

(b) *Civil forfeitures.* These proceedings are commenced by the issuance of a Claim Letter or a Notice of Investigation.

(1) Each claim letter must contain the following:

(i) A statement of the provisions of law alleged to have been violated;

(ii) A brief statement of the facts constituting each violation;

(iii) Notice of the amount being claimed, and notice of the maximum amount authorized to be claimed under the statute;

(iv) The form in which and the place where the respondent may pay the claim; and

(v) Notice that the respondent may, within 15 days of service, notify the claimant that the respondent intends to contest the notice, and that if the notice is contested the respondent will be afforded an opportunity for a hearing.

(2) In addition to the information required by paragraph (b)(1) of this section, the letter may contain such other matters as the FHWA deems appropriate, including a notice to abate.

(3) In proceedings for collection of civil penalties for violations of the motor carrier safety regulations under the Motor Carrier Safety Act of 1984, the claimant may require the respondent to post a copy of the claim letter in such place or places and for such duration as the claimant may determine appropriate to aid in the enforcement of the law and regulations.

(c) *Notice of investigation.* This is a notice to respondent that FHWA has discovered violations of the Federal Motor Carrier Safety Regulations or Hazardous Materials Regulations under circumstances which may require a compliance order and/or monetary penalty. The proposed form of the compliance order will be included in the notice. The Associate Administrator may issue a Notice of Investigation in his or her own discretion or upon a complaint filed pursuant to § 386.12.